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8 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL
9

RECEIVED
APR 30 1992
HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 CHURCH OF SCIENTOLOGY)	Case No. BC 052395
INTERNATIONAL, a California)	
13 not-for-profit religious)	OPPOSITION TO DEFENDANTS'
corporation;)	EX PARTE APPLICATION TO
14)	ABATE OR CONTINUE HEARING
Plaintiff,)	ON PLAINTIFF'S MOTION FOR
15)	PRELIMINARY INJUNCTION
vs.)	
16)	Date: April 27, 1992
GERALD ARMSTRONG; DOES 1)	Time: 1:30 p.m.
17 through 25, inclusive,)	Dept: 85
)	No Trial Date
18)	No Discovery Cut-off
Defendants.)	No Motion Cut-off
19)	

20 I.

21 INTRODUCTION

22 This is an action for breach of contract and injunctive
23 relief stemming from deliberate breaches by defendant Gerald
24 Armstrong ("Armstrong") of a settlement agreement ("the
25 Agreement") which he entered into with plaintiff Church of
26 Scientology International ("plaintiff") in 1986. Originally
27 filed in Marin County, ~~where~~ Armstrong resides, in February,
28 1992, the case was ordered transferred to Los Angeles on March

1 24, 1992.

2 Armstrong's belated ex parte application to this Court is
3 simply the latest in a series of procedural maneuvers undertaken
4 by Armstrong to delay the inevitable entry of preliminary
5 injunction against him for flagrant and repeated breaches of a
6 Settlement Agreement which he entered into with plaintiff Church
7 of Scientology International ("the Church" or "plaintiff") in
8 1986. Plaintiff has attempted to obtain a hearing on its motion
9 for preliminary injunction since this action was filed on
10 February 4, 1992. Having no substantive defense to the motion,
11 Armstrong has countered by seeking delay after delay in the
12 following manner:

13 * Plaintiff's motion was initially set for hearing
14 in Marin County Superior Court on March 6, 1992. On
15 February 27, 1992, Armstrong brought an ex parte
16 application before the Honorable Judge Stevens to
17 continue the hearing on the motion, arguing that he
18 needed more time to prepare his opposition.

19 Armstrong's motion was denied when the Court insisted
20 that Armstrong stipulate to the entry of a Temporary
21 Restraining Order if the hearing were to be continued.

22 * On February 28, 1992, Armstrong brought a second
23 ex parte application to continue the hearing.

24 Concurrently, he filed a pre-emptory challenge of Judge
25 Stevens. Judge Stevens, accordingly, did not rule on
26 Armstrong's application, but referred the matter to the
27 Honorable Michael Dufficy.

28 * On March 3, 1992, Judge Dufficy granted

1 Armstrong's motion for a continuance, but entered a
2 Temporary Restraining Order according to the terms of
3 the Injunction which plaintiff seeks.

4 * On March 5, 1992, Armstrong filed a Motion to
5 Transfer Case, arguing for the first time that
6 jurisdiction was not proper in his home county of
7 Marin. Armstrong argued that plaintiff should have
8 brought the action in Los Angeles.

9 * On March 24, 1992, Armstrong prevailed on his
10 motion to transfer the case, and Judge Dufficy ordered
11 that the case be transferred to Los Angeles. However,
12 Judge Dufficy also heard substantial argument on the
13 merits of the injunctive relief which plaintiff seeks,
14 and continued the Temporary Restraining Order in full
15 force and effect until and including May 4, 1992,
16 expressly to permit plaintiff to seek and obtain a
17 preliminary injunction from this Court.

18 * The file in this matter arrived in Los Angeles
19 and was assigned a case number on April 13, 1992. That
20 very day, plaintiff re-noticed its motion for
21 preliminary injunction for hearing by this Court on
22 April 28, 1992, and so notified Armstrong. [Ex. A] No
23 new briefing was required as the matter had already
24 been fully briefed in Marin County.

25 * After a delay of 2 days, Armstrong filed a
26 meritless "notice" with Department 1, seeking to have
27 this case transferred to another department. [Ex. B]
28 In his notice, Armstrong asserts that the case should

1 be transferred because it is "related" to a case that
2 was tried, settled and dismissed in 1986. The judge
3 currently sitting in the department to which Armstrong
4 seeks transfer is not even the same judge who tried the
5 earlier case. [See Ex. C, plaintiff's Amended Response
6 to Notice of Improper Filing]

7 It is on the basis of this meritless request made to
8 Department 1 that Armstrong, on the day before plaintiff's motion
9 in set for hearing, now asks this Court ex parte to delay yet
10 again hearing on plaintiff's motion for preliminary injunction.

11 II.

12 ARMSTRONG HAS SHOWN NO GOOD CAUSE FOR EX PARTE

13 RELIEF

14 In order to obtain ex parte relief from this Court,
15 Armstrong must demonstrate that there is "good cause" to grant
16 him the relief which he seeks. Law and Discovery Policy Manual
17 for Los Angeles Co., para. 163 (1991). The only "cause" which
18 Armstrong asserts, however, is that he would like to have this
19 motion heard by a different judge.¹ However, as demonstrated in
20 plaintiff's Amended Response to Notice of Improper Filing, Ex. C
21 hereto, which is incorporated herein by reference, Armstrong's
22 attempt to manipulate the assignment of this case to another

23 ¹ Plaintiff's counsel received notice of this hearing by a
24 telephone call from Armstrong's lawyer's secretary on Friday,
25 April 24, 1992. [Ex. D, Declaration of Laurie J. Bartilson; Ex.
26 E, Declaration of Andrew H. Wilson] The secretary told Ms.
27 Bartilson that Armstrong's ex parte papers were ready, and that
28 she would fax them to Ms. Bartilson. [Id.] No papers were ever
sent or received, however, and this opposition was necessarily
prepared based simply on the bare notification by Mr. Morantz's
secretary. [Id.]

1 courtroom is meritless. Armstrong's argument that Judge
2 Geernaert is already familiar with the arguments raised by
3 plaintiff's motion for preliminary injunction is belied by the
4 record of the proceedings before Judge Geernaert. [Ex. C, pp. 7-
5 8] In fact, the only jurist who is familiar with the facts and
6 arguments presented by the motion for preliminary injunction is
7 Judge Dufficy of Marin, who granted plaintiff a temporary
8 restraining order to protect plaintiff's rights while enduring
9 Armstrong's pointless transfer of the case to this Court.

10 Moreover, Armstrong has not demonstrated, and cannot
11 demonstrate, that he will be prejudiced in any way by having this
12 court hear and decide plaintiff's motion for preliminary
13 injunction. This is the first motion to be filed or heard in the
14 case. As the case was assigned to Department 30, it is not even
15 scheduled to be heard by the judge who will ultimately try the
16 case, but by a judge experienced in hearing and deciding motions
17 for preliminary injunctive relief in a wide variety of matters.
18 Armstrong is not entitled to any guarantee that a particular
19 judge will hear a motion in his case, nor can he yet again issue
20 a peremptory challenge to a jurist assigned to this case.
21 The sole purpose of Armstrong's application here is delay.
22 Plaintiff has waited patiently for hearing on its underlying and
23 meritorious motion since February, 1992, and while Armstrong has
24 manipulated the two previous judges off the case. There is no
25 "good cause" to allow Armstrong's motion.

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III.

PLAINTIFF WOULD BE SEVERELY PREJUDICED BY
FURTHER DELAY IN THE HEARING OF THEIR MOTION
FOR PRELIMINARY INJUNCTION

As demonstrated above, plaintiff has been seeking a hearing on its motion since February, 1992. The strength of that motion is such that Judge Dufficy, repeatedly and sua sponte, entered a temporary restraining order to preserve plaintiff's rights until the motion could be fully heard. By requesting a delay in the proceedings now, and a delay of indeterminate length, Armstrong seeks to avoid a determination on the merits, and to have the TRO run out while plaintiff still awaits a hearing. Such a result would manifestly prejudice plaintiff, who would have no protection while Armstrong brazenly and confidently continues to breach his Agreement while retaining all of the proceeds which plaintiff paid to him.

Moreover, plaintiff has already documented multiple instances of Armstrong's covert and deliberate breach of the restraining order now in effect. Plaintiff attempted to have these matters heard on a motion for an OSC re contempt, but were informed by the Marin Court that it would hear no further motions, since the matter was being transferred to Los Angeles. Armstrong would, by this motion, abate the case and all of plaintiff's meritorious claims for relief while the Court waits for an order that may or may not issue from Department 1. The injustice of such a delay is readily apparent, particularly with the restraining order scheduled to end on May 4, 1992. Armstrong should not be permitted to manipulate the processes of the court

1 so as to effectively slam its doors in plaintiff's face.

2 IV.

3 ARMSTRONG'S APPLICATION IS UNTIMELY

4 Plaintiff provided Armstrong with fifteen days notice
5 of the hearing on its motion, scheduled for tomorrow. Armstrong
6 was aware at least from that date that the hearing was scheduled
7 to take place in this department. Further, Armstrong filed his
8 "Notice of Improper Filing" on April 17, 1992. Nonetheless,
9 Armstrong made no effort to bring this ex parte application until
10 the day before the scheduled hearing. Moreover, Armstrong made
11 no effort whatsoever to contact plaintiff's counsel and meet and
12 confer as to a resolution of the ex parte application. [See
13 Footnote 1, supra; plaintiff's counsel was informed of the
14 planned ex parte by Mr. Morantz's secretary, Mr. Morantz himself
15 making no effort to discuss with plaintiff's counsel a possible
16 resolution of his application short of bothering the Court.]
17 Indeed, this application was deliberately brought by Armstrong on
18 the last possible day before the hearing for one reason and one
19 reason only: further delay. Armstrong is plainly hoping with
20 this action to obtain for himself a "window" in which the
21 restraining order is no longer applicable, and in which
22 plaintiff's motion for preliminary injunction is yet to be heard.

23 This conduct is expressly forbidden by this Court's Law and
24 Discovery Policy Manual, para. 163, which provides in relevant
25 part that a "request to continue or take the matter off calendar
26 must be presented to the Clerk in the Department where the matter
27 is to be heard no later than 4:30 p.m. of the third court-day
28 preceding the hearing."

1 Armstrong's ex parte application should be denied on this
2 basis alone.

3 v.

4 CONCLUSION

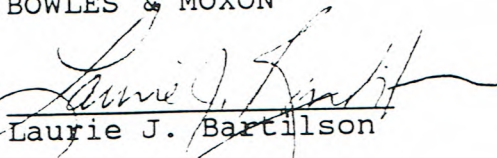
5 Armstrong's application is untimely, meritless, and brought
6 for the sole purpose of delaying his time of reckoning before the
7 Court. It is the latest in a series of delaying, maneuvering
8 tactics that have bounced this cause from courtroom to courtroom,
9 and even from courthouse to courthouse. This Court should end
10 Armstrong's machination, deny his motion, and hear plaintiff's
11 motion for preliminary injunction, as scheduled, tomorrow at
12 10:00 a.m.

13 DATED: April 27, 1992

Respectfully submitted,

14 Andrew H. Wilson
15 WILSON, RYAN & CAMPILONGO

16 BOWLES & MOXON

17 By: 
18 Laurie J. Bartilson

19 Attorneys for Plaintiff
20 CHURCH OF SCIENTOLOGY
INTERNATIONAL

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APR 14 1992

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8 Attorneys for Plaintiff
9 CHURCH OF SCIENTOLOGY INTERNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 CHURCH OF SCIENTOLOGY OF) Case No. BC 052395
13 INTERNATIONAL, a California) (Marin County Superior Court
14 not-for-profit religious) Case No. 152229)
15 corporation;)
16) RENEWED NOTICE OF MOTION AND
17 Plaintiff,) AND MOTION FOR PRELIMINARY
18) INJUNCTION
19 vs.)
20) DATE: April 28, 1992
21 GERALD ARMSTRONG and DOES 1) TIME: 8:30 a.m.
22 through 25, inclusive,) DEPT: 85
23)
24) NO TRIAL DATE SET
25 Defendants.) NO DISCOVERY CUT OFF
26) NO MOTION CUT OFF

21 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that on April 28, 1992 at 8:30 a.m., or
23 as soon thereafter as the matter may be heard, in Department 85
24 of the above-entitled Court, plaintiff Church of Scientology
25 International (the "Church") by this renewed Motion will seek an
26 Order converting the temporary restraining order entered in this
27 case, prior to its transfer to Los Angeles Superior Court, by the
28 Honorable Michael B. Dufficy, into a preliminary injunction,

11 enjoining defendants Gerald Armstrong ("Armstrong") and all
12 others acting in concert or participation therewith, or any of
13 them, from violating any and all provisions of the settlement
14 agreement entered into by the Church and Armstrong in December of
15 1986, a true and correct copy of which is attached hereto as
16 Exhibit A, pending resolution of this action.

17 This action was originally filed in Marin County,
18 California, where Armstrong resides. This instant motion was set
19 to be heard on March 20, 1992. However, on Armstrong's motion,
20 on March 20, 1992, Judge Dufficy ordered the case transferred to
21 this Court, and continued the hearing on plaintiff's pending and
22 fully briefed Motion for Preliminary Injunction so that it could
23 be heard before this Court. At the same time, Judge Dufficy
24 continued a Temporary Restraining Order which he had previously
25 entered, in force and effect until and including May 4, 1992, so
26 as to permit the Church to bring this renewed motion.

27 The relief sought by this renewed Motion is based upon this
28 renewed Motion itself; plaintiff's Complaint; the Memorandum of
Points and Authorities and Evidence in support of the Motion for
Preliminary Injunction previously submitted to the Marin County
Superior Court on February 4, 1992; Plaintiff's Reply to
Defendant's Opposition to Plaintiff's Motion for Preliminary
Injunction, previously submitted to the Marin County Superior

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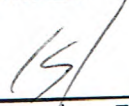
1 Court on March 19, 1992; the pleadings, records and other papers
2 on file in this matter; and such other evidence as the Court may
3 receive upon the hearing of this Motion.

4 Dated: April 13, 1992

Respectfully submitted,

5 Andrew H. Wilson
6 WILSON, RYAN, BLUM &
CAMPILONGO

7 BOWLES & MOXON

8 By: 
9 Laurie J. Bartilson

10 Attorneys for Plaintiff
11 CHURCH OF SCIENTOLOGY
12 INTERNATIONAL
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FILED

MAR 24 1992

HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

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13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF MARIN

17 CHURCH OF SCIENTOLOGY)
18 INTERNATIONAL, a California)
19 not-for-profit religious)
20 corporation;)

21 Plaintiff,

22 vs.

23 GERALD ARMSTRONG; DOES 1)
24 through 25, inclusive,)
25 Defendants.)

Case No. 152229

ORDER RE DEFENDANT'S
MOTION TO DISMISS OR STAY
OR TRANSFER TO LOS ANGELES
SUPERIOR COURT

26 Defendant's motion for a change of venue was heard on March 20,
27 1992 at 9:00 a.m. in the above-entitled Court. Plaintiff was
28 represented by Wilson, Ryan and Campilongo, Andrew H. Wilson
appearing, and by Bowles and Moxon, Laurie J. Bartilson appearing.
Defendant was represented by Ford Greene.

Whereas, the Honorable Bruce R. Geernaert of the Los Angeles
Superior Court, having replaced Paul G. Breckenridge, Jr., in Church
of Scientology of California v. Gerald Armstrong, Los Angeles
Superior Court Case No. C 420 153, narrowly ruled on December 23,

1 1991 that pursuant to Code of Civil Procedure sections 127(a)(4) and
2 664.4 he did not have jurisdiction to enforce the Mutual Release of
3 All Claims and Settlement Agreement executed December 6, 1986; and

4 Whereas, Paragraph 20 of said Agreement is nevertheless
5 effective as a forum selection clause which this court may enforce
6 under Smith v. Superior Court (1986); and

7 Having reviewed the written arguments and evidence submitted by
8 the parties, and having heard the arguments of counsel,

9 It is therefore ORDERED as follows:

10 1. Defendant's motion to transfer the file in Marin County
11 Superior Court Case No. 152229 is GRANTED.

12 a. It is FURTHER ORDERED that the file herein shall be
13 transferred to James H. Dampsey, Executive Officer and Clerk of the
14 superior court of Los Angeles, 111 North Spring Street, Los Angeles,
15 California, 90012 immediately after the expiration of twenty (20)
16 days of the date of this Order as required by Code of Civil
17 Procedure sections 399 and 400, the parties hereto waiving the
18 written notice required by Code of Civil Procedure Section 400.

19 b. It is FURTHER ORDERED that pursuant to Code of Civil
20 Procedure section 399 Plaintiff shall pay the costs of transfer of
21 the file to Los Angeles Superior Court.

22 c. It is FURTHER ORDERED that this Court shall retain
23 jurisdiction to determine, upon noticed motion, whether Defendant
24 should be awarded fees and costs in connection with the bringing of
25 the Motion to Transfer and to enforce, if necessary, Paragraphs 2.b.
26 through f. until the earlier of May 4, 1992 or the date a
27 preliminary injunction motion is appealed or denied in the Los
28 Angeles Superior Court.

2. This Court's order of March 5, 1992 is hereby extended ^{and} ~~through and including the earlier of May 4, 1992~~ ^{or further order of the court.} ~~or the date that a preliminary injunction is granted or denied by the Los Angeles Superior Court.~~ Defendant Gerald Armstrong and his agents are hereby enjoined from violation of that certain Settlement Agreement ("Agreement") dated December 6, 1986, including the following:

a. Armstrong is restrained from violating Paragraph 7(d) which prohibits Armstrong from creating or publishing books or magazine articles, disclosing his experiences with Scientology, and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations listed in Paragraph 1 of the Agreement ("Scientology organizations") affiliated therewith, disclosing documents identified in Exhibit A to the Settlement Agreement, including films, tapes, photographs, recordings or variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the Scientology organizations;

b. Defendant is restrained from violating the provisions of Paragraph 7(g) which prohibits Defendant from voluntarily assisting or cooperating with any person adverse to Scientology in any proceeding against any of the Scientology organizations, or from cooperating in any manner with any organizations aligned against Scientology;

c. Defendant is restrained from violating the provisions of Paragraph 7(h) which prohibits Defendant from testifying or participating in judicial or administrative proceedings adverse to Scientology or any of the Scientology organizations unless compelled to do so by subpoena or lawful process;

1 d. Defendant is restrained from violating the provisions
 2 of Paragraph 10, which prohibits Defendant from assisting or
 3 advising anyone, including individuals, partnerships, associations,
 4 corporations, or governmental entities contemplating any claim or
 5 engaged in litigation or involved in or contemplating any activity
 6 adverse to the interests of any of the Scientology organizations;

7 e. Defendant is restrained from violating the provisions
 8 of Paragraph 18(d), which prohibits Defendant from disclosing the
 9 contents of the Agreement;

10 f. Nothing in this Order shall be construed to prohibit
 11 Armstrong from working in the employ of, or as an independent
 12 contractor for, Ford Greene on matters not involving the Church of
 13 Scientology International or any of the Scientology organizations.

14 DATED 3/24, 1992. MICHAEL B. DUFFICY
 15 JUDGE OF THE SUPERIOR COURT

16 Approved as to form:

17
 18 _____
 19 Ford Greene, Esq.
 20 Attorney for Defendant Gerald
 21 Armstrong

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On April 13, 1992 I caused to be served the foregoing document described as RENEWED NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION on defendants in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original a true copy thereof in a sealed envelope addressed as follows:

Lewis, D'Amato, Brisbois & Bisgaard **HAND SERVED**
221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012

Ford Greene **HAND SERVED**
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal ~~cancellation date or postage meter date~~ is more than one day after date of deposit for mailing an

affidavit.


Executed on April 13, 1992, at Los Angeles, California.

**** (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

Executed on April 13, 1992, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
not-for-profit religious)
corporation;)
Plaintiffs,)
vs.)
GERALD ARMSTRONG; DOES 1)
through 25, inclusive,)
Defendants.)

No. BC 052 395
(Marin County Superior Court
Case No. 152 229)

NOTICE OF IMPROPER FILING
OR, IN THE ALTERNATIVE, OF
RELATED CASE PURSUANT TO
LOS ANGELES SUPERIOR COURT
LOCAL RULE 1103

Date: Discretionary
Time: Discretionary
Dept: One

No Trial Date
No Discovery Cut Off
No Motions Cut Off

TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that defendant GERALD ARMSTRONG hereby
submits the following notice of improper filing, ^{1/} or in the

¹ Based upon the points raised below, defendant Gerald
Armstrong's position is that if this case had been originally been
filed in this Court, it would have been the proper subject of
Local Rule 1103.4. Instead, it was filed in the Marin County
Superior Court, which now has ordered the matter transferred to
this court. Therefore, under the circumstances and as applied,
the filing of the case in the County of Marin which has now been
transferred to Los Angeles Superior Court, is the proper subject
of Local Rule 1103.4.

1 alternative, of related case.

2 This notice is submitted pursuant to Local Rules 1103, at
3 seq. on the grounds (1) that the lawsuit arises from the same or
4 substantially identical transactions, happenings or events; and
5 (2) that the identical factual and legal issues in this case were
6 previously brought before Department 56, the Honorable Bruce R.
7 Geernaert on December 23, 1991, in Los Angeles Superior Court Case
8 No. 420 153; and (3) that this lawsuit is predicated upon the
9 settlement of Los Angeles Superior Court Case No. 420 153 and
10 would require another judge to duplicate the work already
11 performed by Judge Geernaert in Los Angeles Superior Court Case
12 No. 420 153.

13 This notice is predicated upon this notice, the attached
14 declaration of Ford Greene, the attached memorandum of points and
15 authorities, the court's file in this case and in Los Angeles
16 Superior Court Case No. 420 153, and upon such further facts and
17 authorities presented in supplement to this notice.

18 Respectfully submitted:

19 DATED: April 17, 1992

HUB LAW OFFICES

21 By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

DECLARATION OF FORD GREENE

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. Attached hereto and incorporated herein as Exhibit A is a true and correct copy of a document entitled Mutual Release of All Claims and Settlement Agreement.

3. Attached hereto and incorporated herein as Exhibit B is a true and correct copy of a document entitled "Notice Of Motion And Motion To Enforce Settlement Agreement; For Liquidated Damages And To Enjoin Future Violations" filed on October 3, 1991, in Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

4. Attached hereto and incorporated herein as Exhibit C is a true and correct copy of a document entitled Reporter's Transcript of Proceedings, Monday, December 23, 1991, Hon. Bruce R. Geernaert, Judge, in Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

5. Attached hereto and incorporated herein as Exhibit D is a true and correct copy of a document entitled "Notice of Motion and Motion For Preliminary Injunction; Memorandum Of Points And Authorities; Declarations Of Lawrence E. Heller, Laurie J. Bartilson and Lynn R. Farny In Support Thereof" filed in Church of Scientology International v. Armstrong, Marin County Superior Court, Case No. 152 229.

6. On March 20, 1992, Judge Michael Dufficy ordered the transfer of Church of Scientology International v. Armstrong,

1 Marin County Superior Court, Case No. 152 229 to this Court which
2 has been given the case number of this matter, BC 052 395.

3 7. Attached hereto as Exhibit E is a true and correct copy
4 of the docket sheet from the County of Marin upon the transfer of
5 the case to this Court.

6 Under penalty of perjury pursuant to the laws of the State of
7 California I hereby declare that the foregoing is true and correct
8 according to my first-hand knowledge, except those matters stated
9 to be on information and belief, and as to those matters, I
10 believe them to be true.

11 Executed on April 17, 1992, at San Anselmo, California

12 
13 FORD GREENE

14
15
16 MEMORANDUM OF POINTS AND AUTHORITIES

17 I. INTRODUCTION

18 This case comes before this Court in consequence of an Order
19 that it be transferred to this Court that Judge Michael Dufficy,
20 Department 4 of the Marin County Superior Court, issued on March
21 20, 1992, in Case No. 152 229 ("Armstrong II").

22 The genesis of the case at bar lies in the settlement of an
23 action in this court.

24 Due to the familiarity of Judge Bruce R. Geernaert with the
25 provisions of the settlement agreement which plaintiff seeks to
26 enforce herein, said plaintiff has attempted to forum-shop its way
27 out of Judge Geernaert's court by filing the case in Marin County
28

1 Superior Court. Now, that Marin County Superior Court has ordered
 2 the case transferred to this Court, the matter should be assigned
 3 to Judge Geernaert for all purposes.

4 **II. THIS CASE SHOULD BE ASSIGNED TO DEPARTMENT 56**

5 **A. This Case Arises From The Same Or Substantially**
 6 **Identical Transactions, Happenings Or Events**

7 This case is based upon a transaction manifested in a
 8 document entitled "Mutual Release Of All Claims And Settlement
 9 Agreement" (Exhibit A) executed December 6, 1986, which resolved
 10 the Cross-Complaint of Gerald Armstrong, defendant herein, in the
 11 action styled Church of Scientology of California v. Armstrong,
 12 Los Angeles Superior Court, Case No. 420 153 ("Armstrong I") which
 13 had been assigned to the Honorable Paul G. Breckenridge, Jr. in
 14 Department 57. ^{2/}

15 Armstrong II is based upon Scientology's effort to enforce
 16 the same provisions of the settlement agreement as it previously
 17 sought to enforce in Armstrong I. ^{3/} In addition, the alleged
 18 breaches by defendant of said settlement agreement are the same in
 19 both cases. ^{4/}

20 Finally, Scientology has alleged factual matters which
 21 transpired in 1984 and were a part of Armstrong's cross-complaint
 22 in Armstrong I. Exhibit D, at p. 5:6-6:22. This subject matter

23
 24 ² Judge Geernaert stated "I was presented with Judge
 25 Breckenridge's function, since he retired." (Reporter's
 Transcript of Proceedings, Monday, December 23, 1991, at p. 10:24-
 25; Exhibit C.)

26 ³ Compare and contrast Exhibit B at pp. 4:7-5:38 with
 27 Exhibit D at p. 4:15-28.

28 ⁴ Compare and contrast Exhibit B at pp. 6:10-11:17 and
 Exhibit D at pp. 7:1-10:12.

1 falls directly within the scope of provisions of Paragraph 7-I of
 2 the settlement agreement that Scientology now seeks to enforce.
 3 Exhibit A, at ¶ 7-I, p. 11. Therefore, in order to determine
 4 whether or not Scientology should be estopped from seeking to
 5 enforce certain provisions of the settlement agreement on one
 6 hand, while violating other portions of the agreement on the
 7 other, reference will have to be made to the file in Armstrong I.

8 B. This Case Calls For The Determination Of The Same Or
 9 Substantially Identical Questions Of Law And Fact

10 Substantially identical issues of law and fact were
 11 considered by Department 56, the Honorable Bruce R. Geernaert
 12 presiding, during the course of an extended proceeding held on
 13 December 23, 1992, in Armstrong I as are now presented in
 14 Armstrong II.

15 On October 3, 1991, Judge Breckenridge having retired,
 16 in Armstrong I Scientology filed its "Notice Of Motion And Motion
 17 To Enforce Settlement Agreement; For Liquidated Damages And To
 18 Enjoin Future Violations" ("Motion to Enforce"; Exhibit B) in
 19 Department 56, the Honorable Bruce R. Geernaert presiding.

20 On December 23, 1991, Judge Geernaert denied Scientology's
 21 Motion to Enforce because the settlement agreement had never been
 22 reduced to an order or judgment, Exhibit C at 63:22-65:4, and
 23 therefore the court lacked subject matter jurisdiction to enforce
 24 the settlement agreement. ⁵/

25 ⁵ Notwithstanding the fact that Judge Geernaert found that
 26 he did not have subject matter jurisdiction to enforce the
 27 settlement agreement because it had never been reduced to judgment
 28 or incorporated in an order, he maintained jurisdiction to
 interpret the settlement agreement. Said reservation of
 jurisdiction has been predicated upon the express terms of the
 settlement agreement.

1 On or about February 8, 1992, when this case was still in the
 2 Superior Court of the County of Marin (before it was transferred
 3 to this Court and given its instant case number), Scientology
 4 filed its "Notice of Motion and Motion For Preliminary Injunction;
 5 Memorandum Of Points And Authorities; Declarations Of Lawrence E.
 6 Heller, Laurie J. Bartilson and Lynn R. Farny In Support Thereof."
 7 ("Motion for Preliminary Injunction" Exhibit D).

8 The factual basis for the Motion to Enforce in Armstrong I
 9 that Judge Geernaert denied on December 23, 1991, is identical to
 10 the factual basis for the Motion for Preliminary Injunction in
 11 Armstrong II. ^{6/} The relief sought in both cases, an
 12 injunction, is identical. ^{7/}

13 Although the mechanism for the relief sought in Armstrong I
 14 was predicated upon Code of Civil Procedure sections 664.6 and 128
 15 (4), Exhibit B at pp. 11:22-12:3; Exhibit C at p. 18:15-19:14,
 16 and the relief sought in Armstrong II is by means of an

17
 18 Paragraph 20 of the settlement agreement states in full:

19 Notwithstanding the dismissal of the lawsuit pursuant to
 20 Paragraph 4 of this Agreement, the parties hereto agree that
 21 the Los Angeles Superior Court shall retain jurisdiction to
 22 enforce the terms of this Agreement. This Agreement may be
 23 enforced by any legal or equitable remedy, including but not
 24 limited to injunctive relief or declaratory judgment where
 25 appropriate. In the event that any party to this Agreement
 26 institutes any action to preserve, to protect or to enforce
 27 any right or benefit created hereunder, the prevailing party
 28 in any such action shall be entitled to the costs of suit and
 reasonable attorney's fees.

26 ⁶ Compare and contrast Exhibit B at pp. 6:9-11:17 and
 Exhibit d at pp. 7:1-13:2.

27 ⁷ Compare and contrast Exhibit B at p. 15:7-8 with Exhibit
 28 D at p. 20:18-19.

1 injunction, Exhibit D, both require an interpretation of the
 2 provisions set forth in the settlement agreement as well as an
 3 inquiry into the factual context within which the settlement
 4 agreement was executed.

5 C. Assignment Of The Case To A Department Other Than
 6 Department 56 Is Likely To Entail Substantial
 7 Duplication Of Labor, And Thus Result In A Waste Of
 8 Judicial Resources And Tax-Payers' Money

9 In considering Scientology's Motion to Enforce filed in
 10 Armstrong I, Judge Geernaert developed a familiarity with the
 11 issues underlying Scientology's Motion to Enforce.⁸ The issues
 12 underlying the Motion to Enforce and the Motion for Preliminary
 13 Injunction are substantially identical: both address the question
 14 of the enforceability of the settlement agreement. Judge
 15 Geernaert expressed his familiarity with the underlying issues
 16 during the course of the December 23, 1991, hearing on the Motion
 17 to Enforce. He said,

18 And that involves all of the issues that are involved
 19 when injunctions are to be issued, including the
 20 circumstances involved in entering into the agreement,
 21 the equitable concept of unclean hands, and the public
 22 policy concerning any of the provisions sought to be
 23 enforced. These are all argued in your papers. But I
 24 think that you are all assuming that I know more than I
 25 really do know from an evidentiary standpoint.

26 ⁸ At the inception of the December 23, 1991, hearing,
 27 Judge Geernaert stated: "All right. Now, I think it might be
 28 helpful, having read through this, I think -- what I would like to
 do is make a general statement that relates to both of these
 motions and relates to this case and the status of it at this
 time." Exhibit C at p. 2:11-15.

Judge Geernaert has developed an in depth familiarity with
Armstrong I commencing in 1988. That case is the subject of a
 July 29, 1991, published opinion entitled Church of Scientology of
California v. Armstrong (1991) 232 Cal.App.3d 1060. Judge
 Geernaert indicated his familiarity with the Second District's
Armstrong opinion. Exhibit C, at 6:6-14.

1 So my tentative ruling is to set this for an
2 evidentiary hearing and determine this on its merits.

3 I really can't determine it from the arguments
4 submitted so far.

5 * * *

6 And, third, helping Ford Greene as a paralegal,
7 which is, evidently, still going on in connection with
8 the services that Mr. Greene is providing to plaintiff
9 Aznaran.

10 And, fourth, the declaration of August 26, 1991 of
11 Armstrong for Aznaran.

12 Those are breaches of the language of the agreement
13 which is very broad and unclear in some respects and
14 specifically when you are trying to enforce it by way of
15 this kind of provision.

16 But to read the whole agreement, you come up with a
17 wonderment as to what was mutual about it; in other
18 words, it starts out by saying, "This Mutual Release Of
19 All Claims . . ." but all the releases are by Armstrong.

20 And you also wonder to what extent offering
21 assistance is a term that in effect would be, if ordered
22 -- would be a term that any court would put in its
23 order.

24 Exhibit C at pp. 11:19-12:28.

25 And that is that the agreement as worded is all
26 one-sided. It only restrains Mr. Armstrong and which
27 there is nothing immoral about it if people agree to it,
28 but it restrained him in ways that are uncertain,
unclear because, for example, he had agreed to refrain
from, quote, making himself -- I am not sure it is a
quote, something like making himself available to
service of legal process.

Now, as they point out, does that mean -- they
don't quite put it this way, but I'll put it this way --
does that mean that if I were to issue an injunction,
then we could have a contempt hearing if he was at a
restaurant and the process server came in and he didn't
jump up and run away?

It is a concept I feel uncomfortable putting into
an order, even though the parties put it into their
agreement.

So that is the first step.

1 But there is another part to it. And that is that
2 it being so unclear and being so ambiguous and being so
3 one-sided, he argues that it gives support to his
4 argument that it was entered into for the reasons he
5 says that were anything other than voluntary.

6 And he says there were a lot of people that also
7 wanted to enter the agreement.

8 His lawyer represented all the people. If he
9 hadn't signed the agreement, he really had no
10 alternative because the lawyer was getting out either
11 way. There was a suggestion that nobody in their right
12 mind would enter into an agreement like this except
13 under some kind of duress.

14 Exhibit C at pp.22:3-23:4.

15 Based upon the fact that the genesis of Armstrong II lies in
16 the settlement of Armstrong I, based upon the volume of documents
17 already filed in this matter, see Docket Sheet - Exhibit E, and
18 based upon the fact that Judge Geernaert has a preexisting
19 familiarity with the facts, issues, and law underlying this case,
20 it is in the interests of judicial economy for the file in this
21 case to be assigned for all purposes to Judge Geernaert.

22 **III. CONCLUSION**

23 Based upon the foregoing points, Defendant Gerald Armstrong
24 respectfully submits this case should be assigned to the Honorable
25 Bruce R. Geernaert, Department 56, for all purposes.

26 DATED: April 17, 1992

HUB LAW OFFICES

27 By: 

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following

documents: NOTICE OF IMPROPER FILING OR, IN THE ALTERNATIVE, OF RELATED CASE PURSUANT TO LOS ANGELES SUPERIOR COURT LOCAL RULE 1103

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Also By Fax
Without Exhibits

Graham E. Berry, Esquire
LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 North Figueroa Street. Suite 1200
Los Angeles, California 90012

Also By Fax
Without Exhibits

PAUL MORANTZ
Attorney at Law
P.O. Box 511
Pacific Palisades, California 90272

Also By Fax
Without Exhibits

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon

Also By Fax
Without Exhibits

6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[] (Personal Service) I caused such envelope to be delivered by hand to the offices of the addressee.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

///

1 DATED: April 18, 1992



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